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ONE HUNDRED EIGHTH CONGRESS

Congress of the United States

House of Representatives

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January 31, 2003

The Honorable David M. Walker
Comptroller General
General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Dave:

I am writing to follow up on our conversation about the *Walker v. Cheney* litigation.

I have great admiration for the work you have done as Comptroller General. You have reinvigorated the organization and given it a new sense of purpose, accomplished important restructuring, and addressed pressing human capital needs.

But now you face another — and in some ways even more significant — challenge: how you respond to the district court decision in *Walker v. Cheney*. This decision goes to the very heart of GAO's independence.

As you have indicated to me (and your lawyers have indicated to my staff), you will read the decision as narrowly as possible if you decide not to appeal. The narrow reading is that the case does not apply when you are acting pursuant to a request from a committee. If you decide not to appeal, you will take the position that GAO can still use the courts to uphold its statutory rights to information when supported by a committee of Congress.

While I understand the desire to minimize the impact of the district court decision, allowing the decision to stand would do irreparable damage to GAO's independence. As Comptroller General, you have a 15-year tenure, so that you can exercise independent judgment and conduct independent investigations. You are not simply an agent of congressional committees: GAO exists, to quote your mission statement, "to ensure the executive branch's accountability to the Congress under the Constitution and the federal government's accountability to the American people."

If you do not appeal, you will in effect have sacrificed the independence that is essential to your mission. At best, you will be able to pursue effective investigations only when your work is supported by the majority in Congress. Investigations that are requested by the minority would become second-class investigations because GAO would have no ability to compel — or to threaten credibly to compel — the production of information in the face of executive branch recalcitrance.

Allowing the district court decision to stand would also do permanent damage to the Comptroller General's statutory authority to conduct self-initiated work. Under *Walker v. Cheney*, this essential independence is crippled because you would have no standing to assert your independent rights of access to agency information.

Now is exactly the time when an independent GAO is most important. When the White House is controlled by one party and Congress by another party, the public can rely on Congress to conduct oversight of the administration. But when — as now — there is one-party control of both the White House and Congress, congressional oversight will be minimal. If GAO is not available to conduct independent oversight, there simply won't be any.

The need for GAO independence is especially important given the inclinations of the current Administration. This Administration has taken a uniquely hostile approach to oversight and public disclosure. The Administration regularly ignores requests from members of Congress for information, resists GAO efforts to obtain records, and has even issued a directive curtailing public access to information under the Freedom of Information Act. This penchant for secrecy makes GAO's independence of paramount importance.

Given the current political alignment in Washington, it is clear what the easy decision would be: don't appeal. But the core values of GAO are "accountability, integrity, and reliability." I urge you to make your final decision on the basis of these core principles.

Sincerely,

Henry A. Waxman
Ranking Minority Member